

**State of Hawaii**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
Divisions of State Parks and Forestry and Wildlife  
Honolulu, Hawaii 96813

May 8th, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**SUBJECT:** REQUESTING THE APPROVAL TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE COUNTY OF HAWAII FOR THE PURPOSE OF MANAGEMENT OF THE ALA KAHAKAI NATIONAL HISTORIC TRAIL.

**INFORMATION**

The U.S. Congress, through legislation introduced by Senator Akaka, designated the Ala Kahakai National Historic Trail (AKNHT) in the year 2000. This trail is to be administered by the National Park Service (NPS). The proposed 175-mile historic shoreline trail corridor traverses Hawaii Island from Upolu Point, along the western shoreline through the Kohala, Kona, Ka'u, and Puna Districts terminating at the Hawaii Volcanoes National Park's Puna boundary.

Ala Kahakai is the only National Historic Trail designation in Hawaii and one of the 18 National Historic Trail designations in the U.S. Other well known National Historic Trails include: the Iditarod, the Pony Express, the Trail of Tears, Nez Perce and the Lewis and Clark. The AKNHT is unique to the National Trail System in that the indigenous Hawaiian culture constructed portions of the proposed trail corridors in stone that are still widely used for daily coastal access, recreation and traditional and cultural experiences.

AKNHT is envisioned by NPS to be a system of coastal trails (ala loa) that connect historic shoreline communities, National, State and County Parks, natural areas and resort and rural communities. Where there is intact ancient and historic features or routes constructed or traversed by Hawaiians, those features will be identified and considered for managed pedestrian use. In some sections along the proposed corridor, lateral access may require the use of four-wheel drive roads, public highways, or new trail construction.

There are numerous proposed sections that traverse private land. In some instances, a trail or unimproved access road alignment may qualify as State owned under Chapter 264-1 HRS. In other locations, an easement or other form of access agreement must be negotiated for authorized public access and the AKNHT designation. For many of the proposed sections, abstract research is still being conducted to determine the disposition of various ancient and historic trails.

The NPS, with the State, County, community groups, and other interested private sector partners is working to conduct trail planning and to establish management capacity in collaboration with adjacent communities. This management is ideally with the participation of native Hawaiian and

other families that have significant historic ties to the trail that also have an interest to assist in sustaining and managing associated trail segments. There are a variety of additional management options where the trail traverses State and County lands. The AKNHT Comprehensive Management Plan/EIS drafted by NPS is in its final stage of approval and adoption.

Given the vast scope of this National Historic Trail project and the multiple jurisdictions, there is a critical need to clarify the respective roles of the Federal, State and County regulatory and management functions as they relate to the implementation and administration of the AKNHT. The MOU is intended to establish a coherent template to clarify the respective roles between NPS, the Department and County of Hawaii for implementation, management and future regulation of the AKNHT and appurtenant features.

Also, the AKNHT – from Hapuna State Park to Ke Kahakai State Park, is one of the key projects included in the Department's proposed Recreational Renaissance Capital Improvement Project. If the Recreational Renaissance is implemented, this MOU will be useful in clarifying the respective roles of the agencies in the planning, design and construction of features associated with the AKNHT. However, regardless of funding, the MOU is necessary as the NPS continues with the implementation of the AKNHT.

The MOU has been reviewed, commented on and revised as necessary by the appurtenant Department Divisions, legal staff of NPS, The County of Hawaii and the Land Transportation Division of the Attorney General.

**RECOMMENDATION:**

That the Board:

1. Approve that the Department may enter into the Memorandum of Understanding with NPS and the County of Hawaii for the management of the AKNHT

Respectfully submitted,

PAUL J. CONRY



Administrator

Division of Forestry and Wildlife

DANIEL QUINN



Administrator

Division of State Parks

Attachment:

1. Memorandum of Understanding for AKNHT

**APPROVED FOR SUBMITTAL:**



LAURA THIELEN

Chairperson

Board of Land & Natural Resources

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL PARK SERVICE,  
UNITED STATES DEPARTMENT OF THE INTERIOR,  
STATE OF HAWAII, AND  
THE COUNTY OF HAWAII FOR  
THE IMPLEMENTATION, MANAGEMENT, PROTECTION AND PUBLIC USE OF  
ALA KAHAKAI NATIONAL HISTORIC TRAIL**

This Memorandum of Understanding ("MOU") is entered into, by and between the United States Department of the Interior National Park Service, ("NPS") the State of Hawaii, by its Department of Land and Natural Resources, ("DLNR") and the County of Hawaii ("County") for the purpose of managing the Ala Kahakai NHT (Trail).

**ARTICLE I: BACKGROUND AND OBJECTIVES**

WHEREAS, the State of Hawaii, the County of Hawaii, and the NPS have the authority to enter into Agreements that are mutually beneficial and in the interest of the public;

WHEREAS, the National Trails System Act of 1968, as amended, (Act) [16 USC 1244 (a)(22)] established the Trail and placed responsibility for administering the Trail with the NPS;

WHEREAS, only federal lands are to be administered as initial protection components of the Trail; but the Act authorizes the Secretary of the Interior to encourage and assist state, local, and private entities to manage and protect those segments of the Trail and associated resources that cross nonfederally-owned lands;

WHEREAS, the proposed approximately 175-mile long Trail traverses both federal, state, county, and private land and contains sensitive Hawaiian cultural and natural resources;

WHEREAS, these cultural and natural resources are exceptionally unique, rare and unparalleled compared to any other National Historic Trail in the United States, and require careful coordination and commitment from the parties to this MOU and general public to insure their sustainability, particularly when exposed to extended public use over time;

WHEREAS, establishing the alignment(s) and effectuating the management, maintenance and regulation of activities along Trail is a complicated and long-term project;

WHEREAS, NPS, DLNR and the County have determined that it is necessary to establish a documented working relationship between the NPS and the Hawaii public agencies that have jurisdiction and legal responsibility for land along the Ala Kahakai NHT;

WHEREAS, DLNR and the County, the public agencies with jurisdiction over some areas of land where the Trail may traverse, support the concept of a properly protected and managed Trail for traditional and recreational access;

WHEREAS, DLNR has jurisdiction and/or ownership of various sections of historic trails that may comprise the Trail through the Divisions of Historic Preservation, Land, Office of Conservation and Coastal Lands, State Parks and Forestry and Wildlife—Na Ala Hele Trail and Access Program, and their respective applicable Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR);

WHEREAS, several major private landowners have conditions attached to SMA permits, zoning changes, subdivision approvals, or other land use permits administered by the County which require them to allow pedestrian access to and along the shoreline,

WHEREAS, some of these accesses may be suitable for incorporation into the Trail;

WHEREAS, the County continues to receive applications for land use changes from private landowners that may affect the Trail.

WHEREAS, it is essential to coordinate and clarify the jurisdictional, regulatory and management actions and fiduciary responsibilities between the Federal, State and County governments in relation to the management of the Trail in order to provide a seamless trail experience for the user;

## **ARTICLE II: AUTHORITY**

- A. National Trails System Act of 1968, as amended ("the Act")(16 USC 1241-1252),
- B. Hawaii Revised Statutes (HRS) Chapters 6E, 171, 183C, 184, 198D, 205, 205A, and sections 46-6.5, 226-11, 264-1
- C. Hawaii Administrative Rules (HAR) Chapters 13-300, 13-221, 13-146, 13-130 and sections 13-275-284, 15-150-26
- D. Hawaii County Code, Chap. 25 and 34

## **ARTICLE III: STATEMENT OF WORK**

- A. All of the parties mutually agree to meet, confer, consult, and plan together and to
  - 1. Participate in implementing the Trail Comprehensive Management Plan (CMP) and to manage the Trail's resources as appropriate and feasible.
  - 2. Establish individual coordinators within each agency for Trail administration activities.
  - 3. Keep each other informed and consult periodically on management issues pertaining to the Trail.
  - 4. Collaborate on amendments or modification to this MOU, as needed, to further clarify the jurisdictional and working relationship between the three parties or any additional organizations or agencies.
  - 5. Work to develop a single set of guidelines regarding administration and management of the Ala Kahakai NHT to avoid inconsistency.
  - 6. Develop and implement a Programmatic Agreement in accordance with the Section 106 of the National Historic Preservation Act and its implementing regulations, including 36 CFR Part 800.6(a)(C) and 800.14(b), and with the respective agencies to ensure appropriate identification and treatment of historic properties potentially affected by use of the Trail and to coordinate federal and state statutory and regulatory authorities regarding historic properties and burial sites.
  - 7. The parties are not obligated to commit resources or to participate in obtaining funds unless such commitments are a part of a specific, separate agreement. Parties can enter into specific agreements and working plans for implementation of individual projects, hiring of personnel, transfer of funds, purchasing of supplies, and other matters.

- B. NPS agrees to:
1. Act as the lead agency in coordinating activities associated with the implementation of the CMP and this MOU and with administration and management of the Trail.
  2. Review land use permit applications, environmental assessments and impact statements, and other reviews pertinent to the Trail, as requested by parties to this MOU.
  3. Produce and share among the parties Geographic Information System (GIS) maps documenting the historic trail and access data submitted by Na Ala Hele and others, including data generated by the NPS, provided that such information is used in compliance with the terms of the National Historic Preservation Act and the Archaeological Resources Protection Act of 1979
  4. Work with DLNR and the County in responding to legal issues associated with the Trail.
  5. Consider accepting management responsibilities for state-owned portions of historic trail that become official parts of the Trail or for land owned by private entities that wish to participate in the Ala Kahakai NHT program.
  6. Coordinate with the Hawaii Island Na Ala Hele Trail and Access Advisory Council on issues that pertain to the Trail.
- C. DLNR agrees to:
1. Overall:
    - a. Coordinate support from the pertinent Divisions and Programs of the department in the form of data sharing and technical expertise.
    - b. Inform the Governor, Legislature, and Congress on issues that affect the Trail.
    - c. Include the Trail in the review of Conservation District Use applications and other land use permits that affect lands likely to contain ancient and historic trails that might be included in the Trail.
  2. Through the State Historic Preservation Division (HP):
    - a. Continue to provide NPS with historical and archaeological data from the HP database.
    - b. Assist with the investigation and classification of unrecorded burial sites and historic properties.
    - c. Provide regulatory oversight and guidance on issues associated with burial sites and historic properties.
  3. Through the Office of Conservation and Coastal Lands:
    - a. Provide regulatory coordination where the Trail traverses Conservation District lands.
  4. Through the Division of State Parks:
    - a. Provide management of the Trail consistent with the NPS Comprehensive Management Plan where it traverses State Parks.

- b. Collaborate on the design of signs and interpretive media and provide technical interpretive assistance along other sections of Trail not owned by State Parks.
- 5. Through the State Land Division:
  - a. As is mutually determined feasible and desirable, execute either a Set-Aside or Lease Agreement through the Board of Land and Natural Resources (BLNR) that would formally approve the conveyance to the NPS of portions of State-owned ancient or historic *ala loa* (long trail) that qualify to be included as official components of the Trail. It is understood that the execution of either a set-aside or a lease does not relinquish the State's fee simple interest in trail segments that have been determined to be State-owned via Chapter 264-1, Hawaii Revised Statutes.
- 6. Through the Division of Forestry and Wildlife—Na Ala Hele Trail and Access Program:
  - a. Continue to provide abstract data that pertains to the Trail corridor.
  - b. Assist with the determination of alignments that qualify for recognition as part of the Trail or for conveyance to NPS.
  - c. Coordinate with the Hawaii Na Ala Hele Trail and Access Advisory Council on issues that pertain to the Trail.
  - d. Provide technical training on trail maintenance to NPS staff and community volunteers.
  - e. Provide input on the Trail management planning process.
  - f. Collaborate on the design of specific signage that identifies the route of the Trail on the ground and other signage, such as signs warning of specific dangerous natural conditions related to rockfall, flashflood, cliffs, and submerged hazards (excluding hazards related to the ocean).
  - g. Provide other pertinent technical information and staff support related to trail management and maintenance if it does not adversely affect other Na Ala Hele projects and existing staff workload.
  - h. Consider the feasibility of adding currently identified State-owned trail segments that traverse private property, with the consent of the landowner, to the Na Ala Hele Program and include these segments under Chapter 13-130, HAR.
- D. The appropriate County Departments agree to:
  - 1. Through the County Planning Department:
    - a. Continue to enforce county and state laws requiring public access to and along the shoreline as a condition of land use approvals and coastal zone management issues. These trails may become official components of the Trail.
    - b. Require that permit applicants conduct metes and bounds surveys of any historic trails and routes that will be required to be preserved as part of the land use permitting process and that may become part of the Trail. Such geospatial information and supplemental documentation shall be in formats utilizing current industry standards for collection, compilation, processing, analysis and archiving (including Federal Geographic

Data Committee [FGDC] compliant metadata). This data and information may be made available by the County for incorporation into official Trail records and documentation.

- c. Encourage private landowners who have public access requirements as conditions of a land use approval to execute an agreement with the NPS to include these areas in the Trail, where appropriate.
- d. Work with the NPS to identify public access easements with potential incorporation in the Trail.
- e. Work with the NPS to develop a system whereby project applications determined to have potential impacts on historic trails within the Ala Kahakai corridor are sent to the Ala Kahakai NHT administration for review and comment. The notification system will provide approving agencies and applicants clear guidelines on when the Ala Kahakai NHT should be included in the review process. Such applications include Subdivisions, Special Management Area Assessments and Use Permits, Special Permits, Grading, Project Districts, Rezoning, State Land Use District Boundary Amendments, Leases of State-owned lands, Environmental Assessments, and Environmental Impact Statements. The County agrees to contact the NPS regarding these reviews in a timely manner.

2. Through County Parks and Recreation Department

- a. Work with the NPS to identify trail segments through county parks for incorporation into the Trail.
- b. Provide management of the Trail consistent with the NPS Comprehensive Management Plan where it traverses county parks.
- c. Collaborate on the design of specific signage that identifies the route of the Trail, particularly where it traverses County Beach Parks.

**ARTICLE IV: TERM OF MOU**

- A. This MOU will remain in effect for five years, beginning on the date of the last signature below. This MOU may be renewed upon mutual agreement between the Parties

**ARTICLE V: KEY OFFICIALS**

- A. Key officials are essential to ensure maximum coordination and communication between the parties and the work being performed. They are:

**For the NPS**

Aric Arakaki, Superintendent  
Ala Kahakai National Historic Trail  
73-4786 Kanalani Street, #14  
Kailua-Kona, HI 96740  
Telephone: (808) 326-6012  
e-mail: aric\_arakaki@nps.gov

**For DLNR**

Na Ala Hele Program Manager  
Department of Land and Natural Resources  
1151 Punchbowl Street

Kalanimoku Building  
Honolulu, HI 96813  
Telephone: (808) 587-0062

**For the County**

B.J. Leithead Todd, Planning Director  
Aupuni Center  
101 Pauahi Street, Suite 3  
Hilo, HI 96720  
Telephone: (808) 961-8288  
e-mail:  
and  
Patricia Engelhard  
Director of Parks and Recreation Department  
101 Pauahi Street, Suite 6  
Hilo, HI 96720  
Telephone: (808) 961-8311  
e-mail: parks\_recreation@co.hawaii.hi.us

**ARTICLE VI: MODIFICATION AND TERMINATION**

- A. Upon mutual consent of the parties, this MOU may be modified or amended as necessary to clarify roles, management obligations, regulatory functions, or any other purpose necessary to further the administration of the Trail.
- B. Modifications or amendments to this MOU may be proposed by any Party and shall become effective upon written approval by all parties.
- C. This MOU may be terminated upon 60 days advance written notice given by one of the parties to the others, or it may be terminated earlier by mutual consent of all Parties.

**ARTICLE VII: STANDARD CLAUSES**

- A. Civil Rights

During the performance of this MOU, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, age, sex, or national origin. The parties will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, age, sex, or national origin. No otherwise qualified individual will be denied access to a program or activity solely on the basis of a disability.

- B. Publications of Results of Studies

No party will unilaterally publish a joint publication without consulting the other parties. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to the MOU may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.



C. Non-Funds Obligor Document

This instrument is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority of noncompetitive award to the cooperator or any contract or other agreement.

**Approved as to Form:**

For the State of Hawaii Department of Land and Natural Resources

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Date

For the County of Hawaii

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Date

**Approved:**

For the National Park Service

\_\_\_\_\_  
Jonathan B. Jarvis, Regional Director  
Pacific West Region

\_\_\_\_\_  
Date

\_\_\_\_\_  
Aric Arakaki  
Ala Kahakai Trail Superintendent

\_\_\_\_\_  
Date

For the State of Hawaii Department of Land and Natural Resources

\_\_\_\_\_  
Chairperson, Board of Land and Natural Resources

\_\_\_\_\_  
Date

For the County of Hawaii

\_\_\_\_\_  
Mayor of Hawaii County

\_\_\_\_\_  
Date